

8/6/2014

Issue: The question on Oregon's pesticides program related to additional management measures for forestry is whether EPA and NOAA should take

Ex. 5 - Deliberative

## Ex. 5 - Deliberative

Ex. 5 - Deliberative Three factors that complicate this decision are:

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[Note: this issue paper does not consider the pesticides issues for agriculture.]

### Background:

*Rationales.* In EPA and NOAA's 1/13/1998 and 12/20/2013 rationales, the agencies concluded that one of the areas that needed to be addressed in the additional forestry management measures was the adequacy of riparian buffers for pesticides. Specifically, the rationales noted that the State of Oregon had no riparian buffers for aerial application of herbicides on non-fish bearing streams. This is significant in the coastal zone management area, because non-fish bearing streams comprise a large number of stream miles. The 1998 rationale stated that the State of Oregon had passed specific riparian buffers in 1997 for application of fungicides and rodenticides on non-fish bearing streams because of concerns on their toxicity, but not for aerial application of herbicides.

*State Program.* For aerial application of herbicides on small non-fish bearing streams, Oregon's coastal nonpoint program relies on the State's Pesticide Control Law at ORS 634, OAR 603-57, best management practices set by the ODA, and FIFRA. Generally for the program as a whole, Oregon has developed their pesticide program through their Pesticide Management Plan that EPA approved in 2011. Oregon also established a well-regarded multi-agency pesticide stewardship partnerships (PSPs) program. The 12/20/13 rationale describes the PSP program and notes its successes, though there are none currently in the coastal nonpoint management area. In 2013, the legislature increased funding for the PSP program, and those funds will be expanded to monitor new watersheds. Gaps in the pesticide program regarding aerial application of herbicides are a lack of specific buffers for human residences, no prescriptive technology or weather related BMPs for drift control, lack of public notification before aerial spraying, and challenges of accessing pesticide application records.

*Washington Toxics Coalition Lawsuit.* Relating to FIFRA, the Washington Toxics Coalition sued EPA in 2001 for failing to consult with NMFS under Section 7 of the ESA. Since then, EPA initiated consultation with NMFS on several pesticide active ingredients. The public comment period for the seventh BiOp ended on July 7, 2014. For herbicides where NMFS concluded that they are likely to jeopardize listed species, NMFS included reasonable and prudent alternatives, such as buffers around water bodies (fish and non-fish bearing) during application. However, these are not required to be in EPA's labeling requirements. EPA is in the process of finalizing the stipulated injunction, which would effectively settle the litigation.

In response to the lawsuit, EPA, NMFS, USFWS and USDA requested the National Academy of Sciences review existing methods for assessing risks of pesticides to listed species and recommend improvements. In April 30, 2013, the NAS released their report, and the agencies agreed to work jointly to implement the recommendations in a phased, iterative approach and apply it to those pesticides in the original Washington Toxics Coalition lawsuit. As a result, the programs are in the process of using new methods for risk assessment that may affect future EPA labeling requirements or best management practices on herbicides. There will be no court-mandated buffers for atrazine, 2,4-D, or glyphosate (three herbicides of concern), since all BiOps are completed. However, EPA is in the process of reevaluating these herbicides as part of the Registration Review program.

*Triangle Lake and Aerial Drift.* Numerous commenters voiced concerns about exposure to herbicides from aerial drift to their properties and drinking water after applications on nearby forested areas in the Highway 36/Triangle Lake Area in mid-coast Oregon. In particular, several commenters expressed concerns on positive detections of herbicides in their urine and blood samples. EPA Region 10 has also conducted several studies on human health and environmental exposures of pesticides near Triangle Lake. ODA found no violations of EPA labels. However, it should be noted that EPA's labels assume aerial applications 10' above canopy. In Triangle Lake, aerial applications of herbicides may be 70'-80' above canopy increasing the chance for aerial drift to occur. There are positive detections of aerially applied herbicides in people's urine and blood samples, and EPA has also found detections in buffer areas and coastal waterbodies. Oregon does not have prescriptive technology or weather-related best management practices. They also require notification of community water system managers, but not public notification, for aerial spraying. There are guidelines which Oregon has for applicators on buffers, drift control, and notifications.

*Possible Management Measures.*

- The existing labeling requirements for herbicides vary. Some of them specify particular buffer widths. Others speak generically to limiting aerial drift, runoff, or specifying application practices. [Need to ask NMFS on whether they included non-fish bearing streams when looking at salmon habitat]

Impact or significance of the issue

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Constraints

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## **Ex. 5 - Deliberative**

Who is impacted by the issue?

- 1) Local citizens in coastal areas concerned with exposure from aerial application of herbicides
- 2) EPA Pesticides Program and NMFS working on WTC litigation

What are the risks of not resolving the issue?

We must take a final action by January 30, 2015 as agreed upon with NWEA.

Recommendations and Next Steps

- The options are to:

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